



**WP(MD) No.14274 of 2020**

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT  
( Special Original Jurisdiction )

Wednesday, the Third day of January Two Thousand and Twenty Four  
PRESENT

The Hon`ble Mr.Justice G.R.SWAMINATHAN  
WP(MD) No.14274 of 2020

P.MUTHU MOHANRAJ

... Petitioner

Vs

1 THE DEPUTY REGISTRAR OF CO-OPERATIVE SOCIETIES,  
MADURAI RANGE,  
MADURAI

2 J.SUBBULAKSHMI

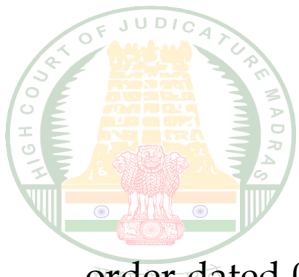
... Respondents

Writ Petition filed praying that in the circumstances stated therein and in the affidavit filed therewith the High Court may be pleased to issue a Writ of certiorari to call for the records in Na.Ka.4620/2016/Sa.Pa. dated 23.6.2020 on the file of the 1st respondent and quash the same.

ORDER : This writ petition coming up for orders on this day, upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.S.KUMAR, Advocate for the petitioner and of Mr.V.NIRMAL KUMAR, Government Advocate on behalf of the Respondent No.1, the court made the following order:-

The petitioner is a retired employee of the Co-operative Society. Proceedings have been initiated against him under Section 87 of the Tamil Nadu Co-operative Societies Act. Challenging the notice dated 23.06.2023, the present writ petition came to be filed.

2.When the matter was taken up for hearing, my attention is drawn to the



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order dated 01.10.2020 made in W.P(MD)No.13476 of 2020. The said order reads as

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follows:

“In this writ petition, notice issued under Section 87 of the Tamil Nadu Co-operative Societies Act 1993 is under challenge. The learned counsel appearing for the writ petitioner submits that the petitioner was employed in the second respondent society, A-2543, Kodimangalam Primary Agricultural Co-operative Society, Kodimangalam, Madurai. He retired from service on 31.01.2016. Surcharge proceedings have been initiated against him after his retirement.

2.When the matter was taken up for admission, I indicated to the counsel that the writ petition may not lie at the show cause stage. In response thereto the learned counsel for the petitioner submitted that the case on hand is squarely covered by the Full Bench Division of the Madras High Court reported in 2015 (1) CTC, (S.Andiyannan and Others Vs. Joint Registrar, Co-operative Societies and Others). He drew my attention to paragraph Nos.26 and 27 of the said order , wherein, it has been held that the surcharge proceedings cannot be initiated against any retired employee.



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3.The learned Additional Government Pleader appearing for the respondents submitted that the said Full Bench Division may have to be revisited in the light of the specific language of Section 87 of the Act. Section 87 of the Act reads as under:-

“87. Surcharge.

(1) Where in the course of an audit under section 80 or an inquiry under section 81 or an inspection or investigation under section 82 or inspection of books under section 83 or the winding up of a society, it appears that any person who is or was entrusted with the organisation or management of the society or any past or present officer or servant of the society has misappropriated or fraudulently retained any money or other property or been guilty of breach of trust in relation to the society or has caused any deficiency in the assets of the society by breach of trust or willful negligence or has made any payment which is not in accordance with this Act, the rules or the by - laws, the Registrar himself or any person specially authorised by him in this behalf, of his own motion or on the application of the board, Liquidator or any creditor or contributory may frame charges against such person or officer or servant and after



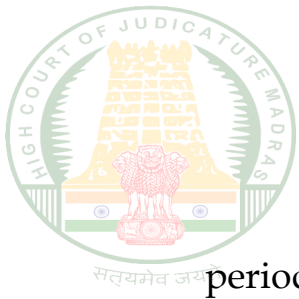
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giving a reasonable opportunity to the person concerned and in the case of a deceased person, to his representative who inherits his estate, to answer the charges, make an order requiring him to repay or restore the money or property or any part thereof with interest at such rate as the Registrar or the person authorised as aforesaid thinks just or to contribute such sum to the assets of the society by way of compensation in respect to the assets of the society by way of compensation in respect of the misappropriation, misapplication of funds, fraudulent retainer, breach of trust or willful negligence or payments which are not in accordance with this Act, the rules or the by-laws as the Registrar or the person authorised as aforesaid thinks just:

Provided that no action shall be commenced under this sub section after the expiry of seven years from the date of any act or omission referred to in this sub section :

Provided further that the action commenced under this sub section shall be completed within a period of six months from the date of such commencement or such further period or periods as the next higher authority may permit but such extended period or



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periods shall not exceed six months in the aggregate.

(2) Without prejudice to any other mode of recovery which is being taken or may be taken under this Act or any other law for the time being in force, any sum ordered under this section to be repaid to a registered society or recovered as a contribution to its assets may be recovered as if it were an arrear of land revenue and for the purpose of such recovery the Registrar shall have the powers of a Collector under the Tamil Nadu Revenue Recovery Act, 1864 (Tamil Nadu Act II of 1864).

(3) This section shall apply notwithstanding that such person or officer or servant may have incurred criminal liability by this act.

(4) The Registrar or the person authorised by him shall, when acting under this section, have all the powers of a Civil Court while trying a suit under the Code of Civil Procedure, 1908 (Central Act V of 1908) in respect of the following matters,  
namely:\_\_\_

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of any documents;



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- (c) reception of evidence on affidavits;
- (d) requisitioning any public record from any court or office,
- (e) issuing commission for examining of witnesses”.

Section 87 of the Act empowers initiation of surcharge proceedings even in respect of a person who was the past officer or servant of the society.

4.He also pointed out that the questions of law referred to the Full Bench were whether the disciplinary proceedings could be continued even after the retirement of the employee and whether Section 87 of the Act could be considered as an enabling provision empowering the disciplinary authority to continue the disciplinary proceedings even after the retirement of the employee. Thus, the question referred to the Hon'ble Full Bench, pertained to continuance of the disciplinary proceedings against a retired employee. Nowhere, the question, as to whether Section 87 of the Tamil Nadu Co-operative Societies Act, authorised initiation of surcharge proceedings against retired employees, arose.

5.I am of the view that the decision of Hon'ble Full Bench may require reconsideration as it apparently runs counter to the express



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text of Section 87 of the Act. I therefore, direct the Registry to place the papers before My Lord the Hon'ble Chief Justice to consider constituting a Larger Bench for revisiting the issue.

6.Since an important question of law has arisen for consideration and is covered by the Full Bench decision, the proceedings against the petitioner alone are put on hold.”

The learned counsel on either side informed that till date no larger bench has been constituted.

3.I therefore direct the Registry to place the papers before My Lord the Hon'ble Chief Justice to take a call in the matter. Since an important question has arisen for consideration and it is covered by the decision of the Full Bench, the impugned proceedings against the petitioner shall be put on hold till the disposal of the writ petition.

sd/-  
03/01/2024

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/01/2024  
Sub-Assistant Registrar  
(C.S. I / II / III /IV)  
Madurai Bench of Madras High Court,  
Madurai - 625 023.

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To **मेव जयते**

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THE DEPUTY REGISTRAR OF CO-OPERATIVE SOCIETIES,  
MADURAI RANGE,  
MADURAI

Copy to:

1.THE REGISTRAR (JUDICIAL),  
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

2.THE REGISTRAR (JUDICIAL),  
MADRAS HIGH COURT, MADRAS.

3.THE SECTION OFFICER,  
WRIT SECTION,  
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

4.THE SECTION OFFICER,  
WRIT SECTION,  
MADRAS HIGH COURT, MADRAS.

ORDER

IN

WP(MD) No.14274 of 2020

Date :03/01/2024

ED/ VR /SAR- (10/01/2024) 8P / 6 C

Madurai Bench of Madras High Court is issuing certified copies in this format from  
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